



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

December 20, 1962

Honorable P. Frank Lake
Secretary of State
Capitol Station
Austin 11, Texas

Opinion Request No. WW-1508

Re: Whether Secretary of
State should issue a
certificate of author-
ity to a foreign corpo-
ration which has 1303b
trust powers and related
question.

Dear Sir:

In your recent letter you requested the opinion of this office as to whether your office should issue another certificate of authority to a foreign corporation which presently has such a certificate with Article 1303b trust powers, unless and until the requirements of Article 1513a are met. You ask a similar question with reference to domestic corporations, i. e.: whether your office should accept and file articles of amendment of a domestic corporation with 1303b trust powers when such amendment would extend the existence of the corporation, unless and until the requirements of 1513a are met.

It is our conclusion that your office should issue the certificate of authority and accept and file the articles of amendment in both instances without regard to the requirements of Article 1513a.

Gordon v. Lake, ____ Tex. ____, 356 S. W. 2d 138 (1962) and Strickland v. Lake, ____ Tex. ____, 357 S. W. 2d 383 (1962), overruling WW-77, finally settled the issue that the adoption of the Texas Business Corporation Act did not repeal Article 1303b by implication.

Article 1303b was specifically repealed by the Legislature effective August 25, 1961. Acts 1961, 57th Legislature, p. 458, ch. 229. The question then arises as to the proper course of action when existing 1303b corporations apply for an extension of their existence. That question is answered by the proviso in the Repeal Act, supra, which reads as follows:

- " 'The repeal of a prior Act by this Act shall not impair or otherwise affect:
- " '(1) The organization or the continued existence of a domestic corporation existing at the time of such repeal or any foreign corporation qualified to do business in this State at the time of such repeal to continue so to do without again qualifying to do business in this State; provided, however, that any corporation heretofore operating by virtue of Section 49 of Article 1302 or 1303b, Vernon's Civil Statutes of Texas, or both, must meet the qualifications of the Texas Business Corporation Act."

Gordon v. Lake, supra, does not hold that the Texas Business Corporation Act is entirely inapplicable to existing 1303b corporations, but rather declares that 1303b corporations may not be organized under or adopt its terms. The language in the repealing statute provides that the existence of 1303b corporations may be continued by meeting the "qualifications" of the Texas Business Corporation Act. The "qualifications" of the Texas Business Corporation Act apparently mean those articles which have to do with the renewal of the certificate of authority by foreign corporations and the filing of amendments by domestic corporations. The repealing statute, being a subsequent expression by the Legislature, in speaking of Article 1303b corporations meeting the qualifications of the Texas Business Corporation Act, controls over any exclusionary language in the Texas Business Corporation Act. Compliance with Article 1513a is not made a condition precedent to the continued existence of 1303b corporations by the repealing statute.

SUMMARY

1303b corporations may obtain certificates of authority or amendments to extend their existence without compliance with Article 1513a.

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Very truly yours,

WILL WILSON
Attorney General

By Bob E. Shannon
Bob E. Shannon
Assistant Attorney General

BES:jf

APPROVED:

OPINION COMMITTEE:

W. V. Geppert, Chairman

Robert Rowland

Howard Mays

Mitchell Stevens

Frank Booth

REVIEWED FOR THE ATTORNEY GENERAL

BY: Leonard Passmore